BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking to Continue Implementation and Administration, and Consider Further Development, of California Renewables Portfolio Standard Program.	)	Rulemaking 15-02-020 (Filed February 26, 2015)

REPLY COMMENTS OF LANCASTER CHOICE ENERGY, MARIN CLEAN ENERGY, AND SONOMA CLEAN POWER AUTHORITY ON THE DRAFT 2016 RENEWABLES PORTFOLIO STANDARD PROCUREMENT PLANS

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Dated: September 16, 2016

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I. INTRODUCTION

In accordance with the California Public Utilities Commission's ("Commission") May 17, 2016 *Assigned Commissioner and Assigned Administrative Law Judge's Ruling Identifying Issues and Schedule of Review for 2016 Renewables Portfolio Standard Procurement Plans* ("ACR"), and the June 8, 2016 *Email Ruling Granting, In Part, IOUs Request for an Extension of Time to Produce the 2016 RPS Procurement Plans*, Lancaster Choice Energy ("Lancaster"), Marin Clean Energy ("MCE"), and Sonoma Clean Power Authority ("SCPA") (collectively, "CCA Parties") hereby submit these reply comments on the 2016 Renewables Portfolio Standard Procurement Plan ("Procurement Plan").

II. REPLY COMMENTS

A. IEP and LSA's Comments Do Not Substantiate a Recommendation for the Commission to Explore a Procurement Entity for CCAs or Other Mechanisms When CCAs are Already Meeting Procurement Obligations at Competitive Prices

In comments, the Independent Energy Producers Association ("IEP") proposed that the Commission explore establishing larger utilities as procurement entities for Community Choice

Aggregation ("CCA") programs for long-term contracts.[1] Though IEP notes that all retail sellers are required to meet certain long-term contracting requirements, IEP makes this request specific for CCA programs.[2] Similarly, the Large-Scale Solar Association ("LSA") recommends that the Commission "look at possible safeguards" to protect against a procurement shortfall, particularly related to CCAs.[3] Aside from stating that larger utilities "could" enable lower cost purchases, IEP does not provide any information on why CCAs are in particular need of a procurement entity.[4] LSA similarly expresses a concern that there "may be" a "potential" disconnect between IOU and CCA procurement planning, but does not explain what disconnect exists and why a safeguard is needed.[5]

The CCA Parties are presently meeting their RPS procurement requirements at competitive prices, and do not foresee a need for an optional procurement entity. Though Public Utilities Code Section 399.13(f)(1) permits an optional procurement entity related to any retail seller, the Commission is expressly prohibited from requiring that such an entity be used.[6] CCAs have sole responsibility over the procurement of resources through the review and approval of their respective governing body, unless expressly restricted (or circumscribed) by statute.[7] As

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1 IEP Comments at 23.

2 *Id.*

3 LSA Comments at 3.

4 IEP comments at 23.

5 LSA comments at 3.

6 *See* Section 399.13(f)(1)(emphasis added) ("[The commission] *shall not...require* any party to purchase eligible renewable resources from a procurement entity."). All further statutory references are to the Public Utilities Code unless otherwise noted.

7 "A community choice aggregator shall be solely responsible for all generation procurement activities on behalf of the community choice aggregator's customers, except where other generation procurement arrangements are expressly authorized by statute." Section 366.2(a)(5).

noted in CCA Parties' Procurement Plans, the CCAs intend to meet or exceed applicable RPS procurement obligation over the 20-year time frame provided in the ACR, which includes the 2021 long-term contracting timeframe specified in Section 399.13(b).[8] The quantity of long-term contracts and the respective risks associated with long- and short-term contracts are important considerations as part of a CCA's forecasting and procurement processes, and will continue to factor into CCA procurement beyond 2021.[9]

B. Contrary to the Explicit Language of SB 350 and the Commission's May 17, 2016 Ruling, the Joint Utilities Incorrectly Apply Procurement Plan Requirements to ESPs and CCAs

The Joint Utilities[10] claim that Senate Bill ("SB") 350's modifications to RPS Procurement Plans now require CCAs "to participate in the RPS program subject to the same terms and conditions applicable to electrical corporations" and therefore request that the Commission require CCAs and Electric Service Providers ("ESPs") to file supplements to their RPS Procurement Plans that include additional materials that IOUs file.[11] To support this claim, the Joint Utilities do not cite SB 350's Procurement Plan requirements, but instead cite the general definition of a retail seller.[12] Noting that CCAs and ESPs are retail sellers under Section 399.12(j) does not provide the legal basis that CCA and ESP RPS Procurement Plans must include additional materials that IOUs file. Indeed, explicit language in SB 350, the May 17, 2016 ACR, and past Commission decisions are to the contrary.

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8 *See, e.g.,* City of Lancaster 2016 RPS Procurement Plan at 2 and Appendix A.

9 *See id.* at 2-3 (for procurement and risk assessment).

10 The Joint Utilities consist of San Diego Gas and Electric Company, Pacific Gas and Electric Company, and Southern California Edison Company ("SCE").

11 Joint Utilities Comments at 1-2.

12 *Id.*

SB 350's treatment of RPS program participation contains important distinctions and qualifications particular to certain entities. Section 399.13(a)(1) directs electrical corporations to prepare a renewable energy procurement plan that "*includes* the matter in paragraph (5)."[13] This language contrasts with all other retail sellers, which are directed to submit renewable energy procurement plans that "address the requirements identified in paragraph (5)."[14] Electrical corporations have many RPS program requirements in Section 399.13 that do not apply to CCAs and ESPs,[15] and to extend these requirements to CCAs and ESPs is contrary to the explicit language in SB 350.

The ACR, issued on May 17, 2016, acknowledges that Commission decisions and existing legislation require the investor-owned utilities ("IOUs") to comply with all Procurement Plan requirements, while ESPs and CCAs are only subject to a subset of these requirements:

> Consistent with the Commission's decisions and applicable legislative changes, compliance with *all* of the requirements set forth below is required by Pacific Gas and Electric Company (PG&E), Southern California Electric Company (SCE), San Diego Gas & Electric Company (SDG&E) (collectively investor-owned utilities or IOUs) ... ESPs and CCAs are also subject to *a subset of these requirements*, as described below.[16]

Past Commission decisions are consistent with this statement. For example, Decision ("D.")14-11-042 required only the IOUs to address economic curtailment,[17] which is reflected in the ACR's direction that only IOUs should complete question 6.9 in the ACR. Indeed, since the Commission's review of CCA participation in the RPS program in D.05-11-025, the

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13 *Id.* (emphasis added).

14 Section 399.13(a)(1).

15 As an example, Section 399.13(a)(2), (a)(3)(B), (a)(4)(A)(v)(I), (a)(4)(C)-(D), (a)(6), (a)(7), (c), (d), (e), and (g) specifically address electrical corporation requirements.

16 ACR at 5.

17 D.14-11-042 at 42.

Commission has expressed legal, regulatory, and policy support for the finding that CCA RPS program participation is not the same as for IOUs, or even ESPs:

> We approach this question as an issue of policy. ESPs and CCAs each are subject to separate and distinct legal and regulatory requirements. Although they are each subject to certain requirements of this Commission as assigned by the Legislature, neither is regulated as a "public utility" as defined by the Public Utilities Code, nor are they subject to Commission regulatory authority as a matter of course. Instead, the Commission is granted specific regulatory authority over these entities for particular issues, in this case, RPS. Because of this, each of these entities in existence or planned operates under a business model that is different from a regulated public utility.
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> This Commission has less overall control over how ESPs and CCAs operate than we do over how utilities operate. Also, to the extent we consider ESP and CCA operations, our concerns about their operations differ somewhat from our concerns about the operations of the investor-owned utilities. In the context of the RPS program, our primary concern is to ensure that ESPs and CCAs do in fact reach the goal of 20% renewable energy by 2010. [citation omitted] We are, however, somewhat less concerned about the details of how they get there.
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> Therefore, we do not believe it is reasonable to require these entities to be subject to the exact same steps for RPS implementation purposes as the utilities we fully regulate. We also do not believe that it is necessarily reasonable to subject ESPs and CCAs to the same RPS process requirements as each other, simply because they are not utilities. A CCA, for example, will likely be answerable to the political authorities in the community in which it is operating, in addition to its customers. The business of an ESP, on the other hand, is much more highly sensitive to price pressures than a utility, which has captive customers, at least at this time. Thus, we are sensitive to the particular requirements and pressures of each type of entity and do not necessarily want to impose a "one size fits all" RPS regulatory scheme. [18]

The Commission further described their findings on more limited RPS Procurement Plan oversight for CCAs in D.06-10-019:

> One area where our oversight is limited is CCAs' RPS procurement plans. We agree with the CCA Parties' interpretation of D.05-11-025, that a CCA will inform us of its RPS plans, but we will not have oversight of its RPS process. Thus, for example, a CCA will not be required to file annual procurement plans, but will be required to meet its APT annually. As explained more fully in the discussion of contracting, below, we also agree

[18] D.05-11-025 at 12-13.

with the CCA Parties that a variety of contracting and procurement mechanisms may be utilized for RPS compliance.[19]

The findings in D.05-11-025 and D.06-10-019 concerning CCA and ESP RPS program participation were described again in D.11-01-026, where the Commission concluded that requiring ESPs to submit procurement plans "does not necessitate changing the long-standing method of requiring what is stated in statute along with determining the supplemental content, if any, of each annual RPS procurement plan."[20] In another 2011 decision, D.11-01-025, the Commission noted that the Commission is not responsible for CCA rates or reviewing RPS contracts, nor do the upfront showing requirements for IOUs apply to CCAs.[21]

Thus, the Joint Utilities provide no support in SB 350 or elsewhere for why the Commission should break from over a decade of precedent and hold that other entities are subject to requirements that apply solely to the IOUs. Indeed, the language of SB 350 and Commission decisions provide explicit support for the contrary.

C. If the Joint Parties Intended to Address CCA and ESP Inclusion in an LCBF Process under Section 454.51, the CCA Parties Do Not Find that Inclusion Consistent with Section 454.51(b)

In a footnote to a June 1, 2016 motion attached to its comments, the Joint Parties[22] recommend that the IOUs charge CCAs and ESPs higher direct costs incurred to avoid over-generation curtailment if they do not adopt a type of least-cost, best-fit ("LCBF") process, pursuant to Section 454.51.[23] The goal of the June 1, 2016 motion was to "ensure that the IOUs'

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19 D.06-10-019 at 18.

20 D.11-01-026 at 15.

21 D.11-01-025 at 10.

22 The Joint Parties consist of the California Biomass Energy Alliance, California Wind Energy Association, Calpine Corporation, Geothermal Energy Association, and Ormat Nevada.

23 Joint Parties Comments, Attachment 1 at 6 (fn. 10).

2016 RPS Plans contained sufficient information to inform parties' comments and Commission decisions on these [energy curtailment] issues."[24] In comments, Joint Parties described findings that largely approved of SCE's treatment of curtailment issues, and noted some remaining curtailment concerns in comments.[25] Thus, Joint Parties may not have intended to incorporate all issues addressed in the June 1, 2016 motion into its comments. To the extent that the Joint Parties did intend to raise cost allocation and LCBF process issues, the CCA Parties note that an LCBF methodological discussion requirement, or an adoption of LCBF components, is not required for CCAs. Section 454.51, cited by the Joint Parties, directs *electrical corporations* to include a strategy for identifying best-fit and least-cost resources to satisfy portfolio needs.[26] CCAs are permitted to submit proposals for satisfying renewables integration need, but that permission does not include or require a strategy for identifying best-fit or least cost resources.[27]

As noted in the CCA Parties' Procurement Plans, CCAs conduct bid solicitations that address a broad range of considerations, including the need for eligible resources, locational preferences, and required online dates.[28] The solicitation and procurement decisions of CCA programs are overseen by governing boards that are typically comprised of local elected officials, and are designed to comply with locally-established targets.[29] Thus, the CCA Parties object to any recommendation for CCA inclusion in a LCBF process adoption or any proposed

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24 Joint Parties Comments at 1-2.

25 *Id.*

26 Section 454.51(b).

27 *See* Section 454.51(a)-(d).

28 *See, e.g.,* City of Lancaster 2016 RPS Procurement Plan at 4.

29 *Id.*

consequences for not doing so. Not only would this be administratively inefficient, but LCBF does not ensure the diverse and balanced portfolio of resources sought by many CCAs.

III. CONCLUSION

The CCA Parties thank the Commission for the opportunity to provide reply comments in this proceeding.

Dated: September 16, 2016

Respectfully submitted,

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VERIFICATION

I, Dan Griffiths, am authorized to make this Verification under Rules 1.8(d) and 1.11(d) on behalf of Lancaster Choice Energy, Marin Clean Energy, and Sonoma Clean Power Authority, who are absent from the County of Sacramento, California, where I have my office. I declare under penalty of perjury that the statements in the foregoing REPLY COMMENTS OF LANCASTER CHOICE ENERGY, MARIN CLEAN ENERGY, AND SONOMA CLEAN POWER AUTHORITY ON THE DRAFT 2016 RENEWABLES PORTFOLIO STANDARD PROCUREMENT PLANS are true of my own knowledge, except as to matters which are therein stated on information or belief, and as to those matters I believe them to be true.

Executed on September 16, 2016, at Sacramento, California.

/s/ Dan Griffiths

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